

(1) Although this occurs post award, the parties and the Administrative Law Judge treated this proceeding as a preliminary hearing held in connection with a post-award request for payment of medical expense. Before appearing before the Administrative Law Judge, claimant filed an E-3, "Application for Preliminary Hearing," and the parties participated in a benefit review conference. The issue of whether there is a relationship

between claimant's 1995 medical expense and his 1991 work-related accident is tantamount to the issue of whether someone has sustained personal injury by accident arising out of and in the course of their employment. Therefore, the Appeals Board has the jurisdiction and authority to review this preliminary hearing Order under K.S.A. 44-534a.

(2) Claimant has failed to establish a relationship between his 1991 work-related accident and the 1995 medical treatment. Claimant injured his left knee in October 1991 in a work-related accident when he fell from a wall. As a result of that injury claimant had a left knee arthroscopy with a partial lateral meniscectomy. Claimant settled that claim with future medical treatment left open. In June 1995 claimant re-injured his left knee when he sustained a rotational and twisting-type injury while walking around two motorcycles in his driveway. As a result of the latest injury claimant again had arthroscopic surgery with anterior cruciate ligament augmentation graft reconstruction with partial lateral meniscectomy.

Respondent presented a letter dated June 27, 1995 from Keith D. Sheffer, M.D., the orthopedic surgeon who treated the injuries sustained by claimant in his 1991 accident. Dr. Sheffer wrote:

"Mr. Carlson was seen in my office on 6-22-95 having sustained another injury to his left knee. He apparently was working on his motorcycle and when he went around the motorcycle he sustained a rotational or twisting type injury to the left knee and had severe pain in the left knee.

"It is my opinion that there is no direct causal relationship between this injury and the claim of October 11, 1991 other than the fact that he has had left knee arthroscopy with a partial lateral meniscectomy which changes the dynamics of the stability of the joint somewhat and as a result of that may make him a bit more prone to sustain a twisting type injury to the knee but that is in some way an indirect cause of this particular injury.

"It is also certainly possible that had the knee been perfectly normal and he sustained this type of injury that he relates this time, he could have had a tear in the meniscus with anatomically normal knee.

"It is therefore impossible for me to draw an absolute causal relationship between these two injuries and in all probability they are not, although the knee as a result of his previous injury is not normal and had slight increase in propensity to have reinjury."

Claimant presented the office notes from J. E. Brown, M.D., the surgeon who treated claimant for the 1995 left knee injury. In his notes dated July 11, 1995, Dr. Brown wrote:

"We did discuss with the patient again the question of how much disability he was having with the knee following his original surgery and whether or not this particular injury is correlated or related to his previous surgery. The patient states once again today that he never felt as though his knee had fully recovered from the previous surgery, and that he was merely walking on good surface when he had the twisting type injury.

"It is difficult to know whether or not there really was any true preexisting deficiency with his ACL, but as I discussed with the patient, I think there may have been some increased signal change with his ACL on the previous MRI from 1992, but on the other hand it is difficult to know why it would take some 2-3 years for this type of recurrent problem to become acutely evident, especially in view of the relatively minimal type of twisting injury he had.

"I explained to the patient that I really don't have the answer, but that I would have to rely on Dr. Sheffer's opinion with regard to that, and I think he has stated that clearly in his outline."

In proceedings under the Workers Compensation Act the claimant has the burden to prove by a preponderance of the credible evidence the various conditions upon which claimant's rights depend. K.S.A. 1991 Supp. 44-501(a). See also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993). The provisions of the Workers Compensation Act shall be applied impartially to both employers and employees. K.S.A. 1991 Supp. 44-501(g). In determining whether the claimant has satisfied his burden of proof, the trier of facts shall consider the whole record.

Based upon the evidence presented to date, the Appeals Board finds claimant has not established a relationship between his 1991 work-related accident and the injuries he sustained at home in June 1995. There is no evidence that the June 1995 incident was either a natural and direct consequence or the result of a natural progression of the injuries received in the 1991 work-related accident. On the other hand, Dr. Sheffer indicates that he believes the two injuries are probably not related, and Dr. Brown says he must rely upon that opinion.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler dated November 30, 1995, should be, and hereby is, reversed and set aside; for the purposes of this preliminary hearing the respondent and its insurance carrier are not responsible for the medical expense incurred by claimant as a result of his June 1995 left knee injury.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul E. Serrano, Jr., Kansas City, Kansas
Marcia L. Yates, Kansas City, Missouri

MARK CARLSON

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DOCKET NO. 174,397

Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director